

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

FILED  
U.S. DISTRICT COURT

2014 OCT 30 PM 4:05

CHATWAL HOTELS & RESORTS LLC.,

Plaintiff,

v.

THE DOLLYWOOD COMPANY, HERSCEND  
FAMILY ENTERTAINMENT CORPORATION AND  
DOLLY PARTON PRODUCTIONS, INC.

Defendants.

Civil Action No. \_\_\_\_\_

S.D. OF N.Y.W.P.

**14 CIV. 8679**  
**JUDGE BRICCETTI**

**COMPLAINT FOR TRADEMARK INFRINGEMENT  
AND UNFAIR COMPETITION**

Chatwal Hotels & Resorts LLC., (Chatwal), brings this action for trademark infringement and unfair competition against The Dollywood Company, Herschend Family Entertainment Corporation, and Dolly Parton Productions Inc..

**PARTIES**

1. Plaintiff, Chatwal, is a New York limited liability company, maintaining its corporate headquarters at 200 West 55th Street, Suite 42, New York, NY 10019.
2. Upon information and belief, defendant, The Dollywood Company, is a joint venture organized under the laws of the State of Tennessee composed of Herschend Family Entertainment Corporation, a Missouri corporation (Herschend), and Dolly Parton Productions, Inc., a California corporation (Parton), with its principal place of business located at 2700 Dollywood Parks Boulevard Pigeon Forge Tennessee 37863. Defendants are referred to hereinafter collectively as TDC.

**JURISDICTION AND VENUE**

3. This is an action for trademark infringement and unfair competition arising under the *Lanham Act*, 15 U.S.C. §§ 1051, *et seq.*

4. This Court has subject matter jurisdiction in this action pursuant to 15 U.S.C. § 1121, and 28 U.S.C. §§ 1331 and 1338.

5. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(b)(2), 28 U.S.C. § 1391(c), and 28 U.S.C. § 1391(d), and this Court has jurisdiction over the defendants. Defendants have committed acts of trademark infringement and unfair competition in the nature of trademark infringement in this District and elsewhere in commerce.

### **FACTUAL BACKGROUND**

6. Chatwal is and has long been recognized as a leading developer, owner, operator and manager of luxury hotels and resorts in the United States and throughout the world.

7. Chatwal selected the DREAM mark and the mark THE DREAM HOTEL for a group of luxury hotels and commencing in 2004 began operations under the DREAM mark and name in New York City. Since that time the use of the DREAM and THE DREAM HOTEL marks and names for Chatwal's luxury hotels has expanded and, since prior to any acts of TDC complained of herein, Chatwal has owned and operated five DREAM luxury hotel properties, three of which are located in the United States, two in New York City and one in Miami Beach, Florida. Chatwal currently has plans to open further DREAM Hotels in New York City (in two additional locations) as well as in Chicago, Dallas and Los Angeles.

8. Chatwal has taken steps to protect DREAM and THE DREAM HOTEL marks and has secured U.S. Trademark Registrations Nos. 2,972,427; 3,200,154 and 3,736,784. A printout of pertinent information about these registrations is attached as Exhibit A.

9. Chatwal's U.S. Trademark Registrations Nos. 2,972,427; 3,200,154 and 3,736,784 are valid and subsisting, and the '427 and '154 registrations are incontestable.

10. The DREAM and THE DREAM HOTEL marks and names are inherently distinctive as used in connection with Chatwal's hotel services and related goods and services and business.

11. The DREAM and THE DREAM HOTEL marks and names have achieved commercial strength by virtue of the continuous and substantially exclusive use and extensive use of such marks and names in connection with the development, ownership, operation and management of luxury hotels.

12. Chatwal has built extensive goodwill in connection with its DREAM and THE DREAM HOTEL marks and names for its hotel services and related goods and services and business.

13. TDC on August 20, 2013, filed an "intent to use" application in the United States Patent and Trademark Office to register the mark DOLLYWOOD'S DREAMMORE RESORT for, inter alia, resort hotel services; hotel, restaurant and catering services. The filing date of the TDC application, which is its priority date, is long subsequent to the date when Chatwal commenced use of the DREAM and THE DREAM HOTEL marks in connection with the same and related services as those identified in the intent to use application of TDC.

14. TDC on August 13, 2013 secured the domain name <http://dreammoreresort.com/> and subsequently posted content to such site showing "DreamMore" prominently displayed in a bigger font than any other text on the website. On this site TDC uses DREAMMORE as a trademark and name to promote its hotel services and solicit business, including members for its "Founders Club," as shown in attached Exhibit B.

15. Chatwal has not consented to Defendants' use of the mark DREAM as a mark or name or component of a mark or name or domain name for hotel services.

## **I. TRADEMARK INFRINGEMENT**

16. This is a claim for trademark infringement of Chatwal's federally registered trademarks in violation of 15 U.S.C. § 1114.

17. The allegations of the preceding paragraphs of the Complaint are incorporated herein by reference.

18. The use of the DOLLYWOOD'S DREAMMORE RESORT mark by TDC, itself and as presented to the public on its website, represents use of a mark and name which is likely to cause confusion with the registered DREAM and THE DREAM HOTEL marks of Chatwal, as to the source of the TDC services and as to the affiliation between TDC's DOLLYWOOD'S DREAMMORE RESORT and Chatwal.

19. TDC's mark which is the subject of this complaint incorporates the entirety of Chatwal's registered DREAM mark and incorporates the dominant element of Chatwal's registered THE DREAM HOTEL mark. The TDC mark as presented to the public emphasizes the "DREAM" component of the composite mark.

20. The services rendered under Chatwal's DREAM and THE DREAM HOTEL marks and the services that are being promoted and will be rendered under the TDC DOLLYWOOD'S DREAMMORE RESORT mark are such as are offered and rendered to the same and overlapping classes of customers through the same and overlapping channels of trade.

21. Members of the relevant trade and public are likely on encountering the TDC DOLLYWOOD'S DREAMMORE RESORT mark in connection with hotel and resort services to mistakenly assume that the services are rendered by or under license from or in affiliation with Chatwal, as the source of DREAM and THE DREAM HOTEL services.

22. The use of the TDC DOLLYWOOD'S DREAMMORE RESORT mark by TDC is in derogation of Chatwal's registered trademark rights. Chatwal cannot control the nature or quality of the services rendered by TDC under the DOLLYWOOD'S DREAMMORE RESORT mark and name, and such use accordingly irreparably damages Chatwal and the considerable goodwill Chatwal has established in its registered DREAM and THE DREAM HOTEL marks.

23. Chatwal has no adequate remedy at law.

## **II. UNFAIR COMPETITION IN VIOLATION OF 15 U.S.C. § 1125(a)**

24. This is a claim for unfair competition in the nature of trademark infringement in violation of 15 U.S.C. § 1125(a).

25. The allegations of the preceding paragraphs of the Complaint are incorporated herein by reference.

26. The use of the DOLLYWOOD'S DREAMMORE RESORT mark by TDC, itself and as presented to the public on its website, represents use of a mark and name which is likely to cause confusion with the DREAM and THE DREAM HOTEL marks and names of Chatwal, as to the source of the TDC services and business and as to the affiliation between TDC's DOLLYWOOD'S DREAMMORE RESORT and Chatwal.

27. Such conduct unlawfully exploits the commercial value Chatwal has developed in the DREAM and THE DREAM HOTEL marks and names, and is likely cause confusion, in that members of the relevant trade and public are likely, on encountering the DOLLYWOOD'S DREAMMORE RESORT mark and name in connection with the hotel and resort services of TDC, to mistakenly assume that the services are rendered by or under license from or in affiliation with Chatwal, as the source of DREAM and THE DREAM HOTEL services.

28. TDC's mark which is the subject of this complaint incorporates the entirety of Chatwal's registered DREAM mark and name and incorporates the dominant element of Chatwal's THE DREAM HOTEL mark and name, and at least some presentations of the TDC mark and name highlight the "DREAM" component.

29. The use of the TDC DOLLYWOOD'S DREAMMORE RESORT mark and name by TDC is in derogation of Chatwal's rights established by its prior and continuous use of its marks and names in commerce in New York and elsewhere.

30. Chatwal cannot control the nature of or quality of the services rendered by TDC under the DOLLYWOOD'S DREAMMORE RESORT mark and name, and such use accordingly irreparably damages Chatwal and the considerable goodwill Chatwal has established in its DREAM and THE DREAM HOTEL marks and names.

31. Chatwal has no adequate remedy at law.

#### **PRAYER FOR RELIEF**

WHEREFORE, Chatwal Hotels & Resorts LLC respectfully requests that this Court:

1. Enter judgment in its favor and against Defendants on the Complaint;
2. Permanently enjoin and restrain Defendants, their officers, agents, employees and all other persons in active concert or participation with Defendants from:
  - a. Using any mark or name which contains or comprises "DREAM" as a mark or name or component of a mark or name or domain name in connection with hotel and resort services;
  - b. Engaging in any other conduct that causes, or is likely to cause, confusion, mistake or deception as to the affiliation, connection, association, origin, sponsorship or approval

of the services offered by Defendants with the Plaintiff, or Plaintiff's services, goods or business, conducted under its marks and names DREAM and THE DREAM HOTEL;

3. Award Plaintiff its damages, attorneys' fees, and costs pursuant to 15 U.S.C. § 1117; and
4. Grant such further relief as this Court deems just and appropriate.

Respectfully submitted,

Dated: October 30, 2014

ECKERT SEAMANS CHERIN & MELLOTT, LLC

By: 

Karl F. Milde, Jr., Esq.

[kmilde@eckertseamans.com](mailto:kmilde@eckertseamans.com)

William H. Dippert, Esq.

[wdippert@eckertseamans.com](mailto:wdippert@eckertseamans.com)

Robert W. Morris, Esq.

[rwmorris@eckertseamans.com](mailto:rwmorris@eckertseamans.com)

Eckert Seamans Cherin & Mellott LLC

10 Bank Street, Suite 700

White Plains, NY 10606

914-949-2909